IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14607 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NASIMBANU @ GAURI NASIRKHAN GAFARKHAN PATHAN

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 14607 of 2004

MR ANIL S DAVE for Petitioner

MR IM PANDYA AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 02/03/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging her detention in pursuance of the order passed against her by Police Commissioner, Surat City, on 6th October, 2004, in exercise of powers

conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 7th October, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two criminal cases registered against the petitioner, under Bombay Prohibition Act, one before Chawk Bazzar Police Station, on 15th June, 2004, wherein it was alleged that the petitioner was found in possession of 28 bottles of prohibited foreign liquor. Second case was registered against the petitioner before Northern Zone Prohibition Police Station, Surat on 9th September, 2004, wherein it was alleged that the petitioner was found in possession of 970 bottles of prohibited foreign liquor. The detaining authority thoroughly examined the investigation papers in both the crimes registered against the petitioner and concluded that the petitioner was dealing in storing, selling and transporting prohibited liquor. In view of the detaining authority, the petitioner was bootlegger within the meaning of PASA Act. The detaining authority concluded that the bootlegging activities of the petitioner were prejudicial to the maintenance of public order and was affecting adversely to the public health. The detaining authority concluded that the bootlegging activities of the petitioner were required to be prevented forthwith. After considering the other alternative remedies available against the petitioner in general law, the detaining authority reached to the subjective satisfaction that there was no other alternative, except to detain the petitioner under the PASA Act to prevent his bootlegging activities forthwith. The detaining authority, therefore, passed an order of detention of the petitioner under the PASA Act as aforesaid, which is under challenged in this petition.

3. Learned Advocate Mr.Anil S. Dave for the petitioner and learned AGP Mr.I.M.Pandya for the respondents were heard at length. The affidavit-in-reply filed by the detaining authority, as placed on record, was also considered.

4. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible material placed before the detaining authority to come to the conclusion that by the activities of the

petitioner the public order was disturbed and public health was adversely affected.

5. To arrive at the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. In this exercise, the detaining authority must draw a line between the cases falling under "breach of law and order" and breach of public order. The fall out, reach and impact of the activities of the petitioner determines whether potentiality of the activities alleged was capable of disturbing the public order. When reach and impact of the activities are so grave, as to affect larger section of society and when widespread danger to life, property or the public health is likely, the activities can be branded as activity affecting the public order. The other cases are cases falling within the scope of breach of law and order, and can be taken care of by the general law. Referring to the two cases under the Prohibition Act filed against the petitioner, and going through the investigating papers, it appears that those cases came to be filed against the petitioner because he was found in possession of some prohibited country liquor in breach of Prohibition Act. Those cases are pending and the petitioner shall be tried and may be punished as well, if found guilty, but it is clear that through the investigating papers, which is the basic material, on which the detaining authority has placed reliance and has formed opinion, do not disclose the impact of activities of the petitioner disturbing the larger section of the society. At the most, these cases may be considered to be breach of law, for which, as aforesaid, the petitioner will be dealt with according to law. Therefore, the act constituting criminal offences registered against the petitioner in dealing with country liquor, have no bearing at all on the question of maintenance of public order. In this view of the matter, the subjective satisfaction arrived at by the detaining authority based on the above material in respect of maintenance of public order is not legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed on this ground alone.

6. In the result, the petition is allowed. The

order passed by the Police Commissioner, Surat City on 6th October, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu NASIMBANU @ GAURI NASIRKHAN GAFARKHAN PATHAN is hereby ordered to be set at liberty forthwith if she is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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